

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1980 - HB 2471

March 14, 2016

SUMMARY OF ORIGINAL BILL: Defines “recreational vehicle” (“RV”) as a vehicle which is self-propelled or towed by a consumer-owned tow vehicle and designed to provide temporary living quarters for recreational, camping, or travel use that complies with all applicable federal vehicle regulations and does not require a special-movement permit to legally use the highways and includes a motor home, travel trailer, fifth wheel travel trailer and folding camping trailer. Defines a “recreational vehicle dealer” (“dealer”) as a person engaged in the business of selling, offering, to sell, soliciting, or advertising the sale of a RV or possessing a RV for the purpose of resale, either on that person’s account or on behalf of another, either as that person’s primary business or incidental to that person’s business. Defines “recreational vehicle salesperson” (“salesperson”) as a person employed by a licensed dealer who is engaged in the business of effecting or attempting to effect the sale or purchase of recreational vehicles or recreational vehicles owned by some other person to residents of the state, for which some form of remuneration is expected, whether by salary, fee, commission, rental, or otherwise, regardless of whether the remuneration is paid by the buyer, seller, or a third party. Defines “distributor” as any person who in whole or in part sells or distributes any new and unused recreational vehicles to recreational dealers or who maintains distributor representatives. Defines “manufacturer” as any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.

Establishes application requirements for dealers, salespersons, factory representatives, distributors and manufacturers’ licenses. Establishes initial and biennial renewal licensure to be accompanied by a fee as set by the Motor Vehicle Commission (“Commission”). Establishes a penalty of fifty percent of the amount of the license fee for any late renewal; however, no application shall be accepted 90 days after the expiration date of the license. Prohibits any person from engaging in the business as, serving in the capacity of, or acting as a manufacturer, factory representative, dealer, or salesperson dealer, salesperson, factory representative, distributor and manufacturer without first obtaining a license. Prohibits any dealer from hiring any person for purpose of selling recreational vehicles, or for acting in the capacity of a salesperson without first determining that the person is licensed as a salesperson and further prohibits any salesperson from selling or attempting to sell any RV for any dealer, unless such salesperson is employed by the dealer having an interest in the sale of the recreational vehicle. Prohibits any dealer or salesperson from giving, paying, or in any manner compensating any other person for services rendered as a salesperson without first engaging or employing the person as a recreation vehicle salesperson.

Prohibits any dealer, salesperson, distributor or manufacturer from engaging in more than one of the activities for which a license is required under this part or having more than one location

where the business is conducted without acquiring a license for each place of business. A dealer is required to provide proof of a \$50,000 surety bond.

Establishes grounds for denial, suspension, or revocation of a dealer, salesperson, distributor and manufacturer's licenses. Any decision made by the Commission regarding the denial, suspension, or revocation of any licensee may be judicially reviewed in Davidson County. Any hearing or judicial review shall be governed by the Uniform Administrative Procedures Act. Establishes that any violation of the provisions in this legislation or any order issued by the Commission is subject to a civil penalty of at least \$100 and no more than \$5,000 for each day or act of violation, as the Commission or court deem proper. All civil penalty revenue shall be paid into the general fund of the state. Authorizes the Commission, through the Attorney General and Reporter, to issue an injunctive relief to any person which has violated, is violating, or is about to violate any applicable provision of this legislation. Any suit for injunctive relief or recovery of a civil penalty or for both may be brought either in the county where the defendant resides or conducts business or in the county where the violation or threat of violation occurs. Any person who knowingly violates any provision of this part commits a Class C misdemeanor.

On or before February 15 of each year, a dealer is required to submit an annual report to the Commission which indicates the number of recreational vehicles sold by the dealer during the preceding calendar year, the number of dealer registration plates issued to the dealer during the year, and the county or counties in which the plates were issued. Any dealer that fails to timely file the report is ineligible as a dealer until the report is filed. Authorizes the Commission to take possession of any dealer plates for a dealer which has become ineligible and submit such plates to the Department of Revenue. Upon request by the Commission, the Department of Revenue is required to provide information concerning the number of dealer registration plates issued to each dealer.

Defines "recreational vehicle show" as any display of recreational vehicles by one or more manufacturers or dealers. Requires any sponsor or promoter of a RV show to attain a RV show permit prior to the commencement of such show. Provides exemptions to this permit requirement for certain venues.

All revenue resulting from fees, penalties or interest shall be allocated to the Commission. The Commission is required to pay all money received as fees and charges to the State Treasury, and the Commissioner of Finance and Administration shall make allotments out of the General fund as the Commissioner deems proper for the necessary expenses of the Commission. Prohibits the Commission from incurring any expenditure unless the Commissioner has made the allotment. Such allotment shall be made by the General Assembly in the *General Appropriations Act*.

Establishes the *Tennessee Recreational Vehicle Franchise Act of 2016*. Defines "manufacturer/dealer agreement" as a written agreement or contract entered into between a manufacturer and a dealer that fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles. Defines "area of sales responsibility" as the geographic area, agreed to by the dealer and the manufacturer in the manufacturer/dealer agreement, within which area the dealer has the exclusive right to display and sell the manufacturer's new recreational vehicles of a particular line-make to the retail public. Defines

“line make” as a specific series of recreational vehicles that: are identified by a common series trade name or trademark; are targeted to a particular market segment, as determined by their décor, features, equipment, size, weight, and price range; have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same décor, equipment, features, price, and weight; belong to a single, distinct classification of RV product type having a substantial degree of commonality in the construction of chassis, frame, and body; the manufacturer/dealer agreement authorizes a dealer to sell. Defines “warrantor” as any person, firm, corporation, or business entity, including a manufacturer or supplier, that provides written warranty to a consumer in connection with a new RV or a part, accessory, or component of such vehicle; and does not include service contracts, mechanical or insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

Prohibits any manufacturer or distributor from selling a RV in this state without having first entered into a manufacturer/dealer agreement with a dealer that has signed both parties. The manufacturer is required to designate the area of sales responsibility exclusively assigned to a dealer in the manufacturer/dealer agreement and may not contract with another dealer for sale of the same line-make in the designated area for the duration of the agreement. An established area of responsibility may not be changed until a year has passed after its execution of the manufacturer/dealer agreement and only with consent of both parties.

Establishes that a manufacturer or distributor may terminate, cancel, or fail to renew a manufacturer/dealer agreement only with good cause, and must provide an affected dealer at least 90 days’ prior written notice of termination, cancellation, or nonrenewal of the manufacturer agreement. Provides certain exceptions for specific reasons of good cause which allow the notice period to be reduced to 30 days. Establishes the details which must be provided in such notice. Authorizes a dealer to terminate or cancel its manufacturer/dealer agreement with a manufacturer or distributor with or without good cause by providing 30 days’ written notice. Provides means for a manufacturer to repurchase new, untitled vehicles by the manufacturer from the dealer which has terminated or canceled a manufacturer/dealer agreement. Provides means for a dealer to transfer or change ownership, thereby requiring such dealer to provide written notice to the appropriate manufacturer or distributor at least 15 business days before the closing. Provides means for the manufacturer or distributor to object to the change in ownership.

Establishes warrantor obligations, which require a warrantor to: specify in writing to each of its dealer obligations, if any, for preparation, delivery, and warranty service on its products; compensate the dealer for warranty service required of the dealer by the warrantor; and provide the dealer the schedule of compensation to be paid and the time allowances for the performance of any work and service. The schedule of compensation is required to include reasonable compensation for diagnostic work as well as warranty labor. Establishes violations against warrantors failing to honor its obligations. Authorizes a dealer to reject a new RV that has been damaged in transit if the carrier has been selected by the manufacturer or distributor. Prohibits coercion of a dealer by a manufacturer or distributor. Establishes that prior to any dealer, manufacturer, or warrantor bringing a civil action in circuit court to recover actual damages from another party, such dealer, manufacturer, or warrantor must enter mediation.

The *Tennessee Recreational Vehicle Franchise Act of 2016* shall become effective January 1, 2017. All other provisions of this legislation shall become effective on July 1, 2017.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue –

\$68,900/FY17-18 and Every Two Years Thereafter/State Treasurer

\$2,000/FY18-19 and Every Two Years Thereafter/State Treasurer

Increase State Expenditures –

\$59,600/FY17-18/Motor Vehicle Commission

\$56,400/FY18-19 and Subsequent Years/Motor Vehicle Commission

SUMMARY OF AMENDMENT (013193): Deletes and rewrites the bill such that substantive changes include: substitutes “vehicle salesperson” for “recreational vehicle salesperson”; authorizes a recreational vehicle dealer to sell used motor vehicles in addition to recreational vehicles; establishes that no vehicle salesperson is required to obtain more than one salesperson license to perform for a recreational vehicle dealer dually licensed as a recreational vehicle dealer and motor vehicle dealer; establishes that a motor vehicle dealer and motor vehicle salesperson, for purposes of holding a motor vehicle sales license, do not include a recreational vehicle dealer; and establishes that the definition of a “recreational vehicle dealer” specifically excludes a motor vehicle dealer.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- Requires the Motor Vehicle Commission to create a separate fee structure for licensing recreational vehicle dealers, salespersons, factory representatives, distributors and manufacturers.
- Currently, a motor vehicle dealer’s license is required to sell motor vehicles in this state.
- Pursuant to motor Tenn. Code Ann. § 55-17-102, the definition of “motor vehicle” includes a motor home.
- Currently, recreational vehicles would be categorized as a “motor home” pursuant to Tenn. Code Ann. § 55-1-104; therefore, dealers of recreational vehicles are currently required to be licensed as motor vehicle dealers.
- The Commission will create a fee structure identical to that currently in place for motor vehicle dealers; therefore any decrease in motor vehicle dealer licenses will be offset by a corresponding increase in recreational vehicle dealer licenses.

- This proposed legislation will not result in any significant increase in the aggregate number of licenses issued by the Commission.
- Any person who knowingly violates any provision of this part commits a Class C misdemeanor.
- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- No change to the number of RVs sold in the state; therefore, no significant impact to the number of vehicle registrations or titles issued by state or local governments.
- Pursuant to Tenn. Code Ann. § 4-29-121, all regulatory boards are required to be self-supporting over any two year period. The Motor Vehicle Commission had surpluses of \$282,456 in FY13-14, \$618,571 in FY14-15, and a cumulative reserve balance of \$2,240,017 on June 30, 2015.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee" followed by the letters "RNC" in a smaller, less legible script.

Krista M. Lee, Executive Director

/jdb